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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,375	08/01/2003	Mikio Uchida	AA540C	4170

27752 7590 07/25/2005

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/632,375	Applicant(s) UCHIDA ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/23/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of IDS dated 5-23-05, amendment, terminal disclaimer and remarks dated 10-27-04 is acknowledged.

Claims 1 and 3-20 are pending. Claim 2 has been cancelled.

In response to the terminal disclaimer filed 4-27-04, examiner has withdrawn the following rejections of record:

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 and 18 of copending Application No. 10/273,816.

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/632,279.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by US application 10/273,816 (PGPUB No. 2003/0108502).

Claims 1-20 are directed to the same invention as that of claims 1-18 of commonly assigned 10/273,816.

Claims 1-20 are directed to the same invention as that of claims 1-23 of commonly assigned 10/632,279 (PGPUB No. 2004/0022823).

The following is a new rejection:

Claim Rejections - 35 USC § 103

1. Claims 1, 3-8, 12-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720).

'720 teach an anhydrous composition for hair treatment, particularly hair condition effect, comprising two components that are separated until use and which when mixed with water generates heat (col. 2, lines 38-42). The first component of '720 comprises a physiologically compatible salt that generates heat upon mixing with water and a thickening agent, and the second component comprises at least polyalcohol that is liquid at 25 degrees C (col. 1, lines 30-45). '720 teach that the salts are preferably chloride salts of calcium, magnesium and zinc, which read on the instant heat-generating component (col. 1, lines 43-57). For component B, '720 teach alcohols selected from the group consisting of polyethylene glycol, polypropylene glycol, glycerol, diglycerol etc (col. 2, lines 10-37). '720 further teaches addition of conditioning agents such as cationic polymers, film-forming agents. The examples listed in col. 3-4 of '720 also recite lactic acid, along with components such as jojoba oil, that meet the claimed acid and inert carrier respectively. '720 fail to teach a phase changing agent that has a melting point of about 30 degrees C to about 60 degrees C. However, '720 teach composition with several cationic polymers, surfactants, thickeners that include the read on the instant phase changing material.

Examiner notes that the instant claims recite "about 30 degrees C" as the lower limit of the melting point and the specification does not provide any definition of "about". Accordingly, absent showing criticality of the melting point of the phase changing, the

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term "about" of instant claim allows for the component B of '720 (which has a melting point of 25 degrees C), which is within the "about" range of the instant claims.

Further, instant specification describes that the phase changing agent having a certain melting point of the present invention can absorb a heat from the heat generating agent by changing its phase from solid to liquid, and then, release the heat slowly by changing its phase from liquid to solid, prevent the compositions from warming up to a higher temperature than expected, and provide prolonged warming from the compositions, without using coated heat generating agents. In this regard, '720 also teach the same compounds as heat generating agent and further states that the heat generated by the heat-generating agent is at a temperature of 40 to 60 degrees c. Accordingly, it would have been within the scope of a skilled artisan choosing the second component (of '720) such that the component is capable of absorbing the heat, generated by the salts and further maintaining the heat for proper conditioning of the hair.

2. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) as applied to claims 1-8, 12-16, 18 and 20 above, and further in view of US 6,540,989 ('989).

'720 fail to teach the claimed amido amines.

'989 teach a self-warming hair care composition comprising a glycol, a quaternary ammonium compound, an amidoamines and a silicone. The composition of '989 is anhydrous and upon contact with water generates heat giving the user a

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pleasant feeling and also the conditioning ability (col. 1). '989 teach amidoamines (col. 3, lines 41-55; col. 5) and fatty alcohols (col. 4, lines 26-30; col. 5) that are also described in the instant specification. '989 also teach polyoxyalkylene derivatives.

Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add amido amine of '989 to the composition of '720 and use the composition for hair care such as hair conditioning because '989 teaches that amido amine acts as a deposition aid and a conditioner, and that a heat generating composition that is self-warming gives a warm feeling to use and also provides good conditioning because of amidoamine. Accordingly, the expected result would be to effectively condition hair as well as provide a warmth sensation to use indicating that the composition is working effectively. Further, with respect to the ratio of amidoamines and acid claimed, '989 teach that a clear conditioning composition is obtained with amino acid neutralized with acid. Accordingly, optimizing the ratio of amido amine and acid so as to obtain an effective conditioning effect.

3. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) as applied to claims 1-8, 12-16, 18 and 20 above, and further in view of EP 027 730 (EP 730).

Claim 9-11 recite polyoxyalkylene derivatives, in particular claim 8 recites polyoxyethylene/polyoxypropylene block copolymer.

'720 fail to specifically teach the claimed polyoxyalkylene derivatives of the instant claims.

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EP '730 teaches cosmetic compositions for hair or skin treatment, comprising heat generating compounds when brought into contact with water (page 3). Among the heat generating compounds EP 730 teaches fatty alcohols, alkylene glycols and polyoxyalkylene derivatives (page 5, in particular lines 8-19 and page 6, lines 8 to page 7, lines 13). More specifically EP 730 teaches the claimed polyoxyethylene and polyoxypropylene copolymer (example 4 on page 12). Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the pluronic or any other suitable polyoxyalkylene derivatives as additional heat generating agents in the composition of '720 because EP 730 teaches that the above polyoxyalkylene derivatives are preferable as heat generating compounds (page 8) and suggests that the heat generating compounds give an excellent finishing and cleansing effect to the consumer upon application, which results in a comfortable hot feeling.

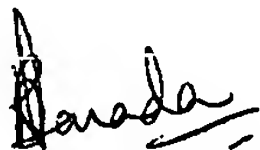
Response to Arguments

Applicant's arguments with respect to claims 1 and 3-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
July 21, 2005